

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Petitioner, No. CIV S-02-1413 LKK KJM P

vs.

DAVID RUNNELS, Warden,

Respondent. ORDER

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 23, 2005 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

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For the reasons set forth in the magistrate judge's June 8, 2005 findings and recommendations, petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability should not issue in this action.

IT IS SO ORDERED.

DATED: February 23, 2006.

/s/Lawrence K. Karlton
UNITED STATES DISTRICT JUDGE

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